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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

TODD ROSCHELLE, Petitioner, v. THE SUPERIOR COURT OF SANTA CRUZ COUNTY Respondent; THE PEOPLE, Real Party in Interest.	No. H045357 (Santa Cruz Super. Ct. No. 17CR02212)

Petitioner Todd Roschelle was charged by information filed October 6, 2017 with two counts of violating former Health and Safety Code section 11360, subdivision (a) (unlawful transportation for sale of marijuana). Count 1 was alleged to have been committed on or about September 12, 2016; count 2 was alleged to have been committed on or about September 1, 2016 to September 20, 2017.

At the preceding preliminary hearing, the magistrate had allowed the People's principal witness, Postal Inspector Jamon Parham, to testify to hearsay over defense objection under Penal Code section 872,[1] which states the qualifications that an officer must have to testify to hearsay at a preliminary hearing. The magistrate also denied

[1] All further statutory references are to the Penal Code unless otherwise stated.

petitioner's motion to quash and traverse a warrant and suppress evidence, which was heard in conjunction with the preliminary hearing, and held him to answer.

In the trial court, petitioner filed a section 995 motion challenging the legality of his commitment and the magistrate's denial of his motion to quash and traverse a warrant and suppress evidence. After the trial court denied his section 995 motion, he filed an original petition for writ of mandate in this court. The petition seeks a writ directing the superior court to grant his section 995 motion and suppress evidence.

We stayed all trial court proceedings until further order of this court and issued an order to show cause (returnable in this court) why petitioner was not entitled to the relief requested. The Attorney General filed a return accompanied by a supporting declaration from Inspector Parham. Petitioner filed a reply.

We conclude that the magistrate erred in overruling the defense's objection under section 872 to Inspector Parham's hearsay testimony at the preliminary hearing. Without the inspector's erroneously admitted hearsay testimony, the evidence was insufficient to establish reasonable or probable cause for commitment. The trial court should have granted petitioner's section 995 motion and set aside the information on the ground that petitioner "had been committed without reasonable or probable cause." (§ 995, subd. (a)(2)(B).) Accordingly, a peremptory writ of mandate will issue.

Petitioner's challenges to the magistrate's denial of petitioner's motion to quash and traverse a warrant and suppress evidence are rendered moot by the relief that we grant. " ' "[T]he duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." ' [Citation.]" (*Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541.)

I

Procedural History

On May 26, 2017, apparently after the filing of a complaint alleging that petitioner had committed a violation of former Health and Safety Code section 11360, subdivision (a), and before the preliminary hearing, petitioner filed a motion under section 1538.5 to quash and traverse a search warrant and to suppress evidence.

Petitioner sought to suppress any evidence derived from the search of a package that was mailed from Capitola, California to Ian Hollar, 5221 Talbot Way, Hamilton, New Jersey. A warrantless search of that package revealed that it contained 907 grams of suspected marijuana.

Petitioner sought to quash and traverse a warrant authorizing the search of another package sent to another New Jersey address on the ground that the search warrant affiant, Inspector Parham, had misrepresented and omitted material facts concerning the search of the package sent to the Talbot Way address in his affidavit. Petitioner asserted that Inspector Parham intentionally misstated that consent to search the package sent to the Talbot Way address had been obtained from the "intended recipient" and omitted material information that it was actually a third party who had consented to the search of the package and that law enforcement had no basis for believing that this individual had authority to consent. Petitioner argued that the search warrant should be quashed because the affidavit was insufficient to support a finding of probable cause when the material information was added to the affidavit and the material misstatements were removed. He contended that the search pursuant to warrant was not saved from the exclusionary rule by the good faith exception recognized by *United States v. Leon* (1984) 468 U.S. 897 (*Leon*).[2]

[2] *Leon, supra*, 468 U.S. 897 "held that the exclusionary rule does not apply when the police conduct a search in 'objectively reasonable reliance' on a warrant later held invalid. 468 U.S., at 922." (*Davis v. United States* (2011) 564 U.S. 229, 238-239.)

The preliminary hearing began on September 26, 2017 and continued through September 27, 2017. Two witnesses testified in the preliminary examination portion of the hearing. The People called Inspector Parham, who testified that he was a peace officer employed by the United States Postal Inspection Service (USPIS) as a postal inspector. Inspector Parham testified at length regarding three Priority Mail packages intercepted and searched by the USPIS in the course of a narcotics investigation.[3] In August of 2016, Inspector Parham was assigned to a PMN (prohibited mail narcotics) team, which worked out of the San Francisco division of the USPIS. Three Priority Mail packages were intercepted by the USPIS. The People also called Britt Elmore, who was a peace officer with the San Francisco Police Department and part of a canine team trained to detect narcotics.

At the time of the September 2017 preliminary hearing, Inspector Parham had been employed as a postal inspector for nearly five years, having reported for duty on October 4, 2012. Before going on duty, he had graduated from the USPIS's 12-week basic inspector training program. The inspector confirmed that the program was "part of the Federal Law Enforcement Training Agency, or Association" and the "Federal Law Enforcement Training Centers" (FLETC). At the preliminary hearing, much of Inspector Parham's testimony regarding the three packages was hearsay, which was admitted over objection.

Package No. 1 was addressed to Todd Roschelle, 52 Melwood Street, Watsonville, California 95067. It had a return address of 17 Fenway Road, Trenton, New Jersey 08620. Package No. 1 was mailed on August 25, 2016, but the parcel was not delivered to petitioner. When Package No. 1 was searched pursuant to a warrant, it was found to contain $5,000 in cash but no drugs.

[3] The final digits of the tracking numbers for the three packages were 026009 (Package No. 1), 0205 (Package No. 2), and 032999 (Package No. 3). For the sake of clarity, we will refer to them by package number.

Package No. 2 was addressed to Ian Hollar, 5221 Talbot Way, Hamilton, New Jersey 08691. It had a return address of 170 Tiburon Court, Aptos, California 95003. Package No. 2 was mailed on September 7, 2016 and intercepted on September 9, 2016. Package No. 2 was found to contain 907 grams of suspected marijuana when opened, reportedly pursuant to consent.

Package No. 3 was addressed to Kyle Kondas, 3 Hemlock Court, Trenton, New Jersey 08619. It had a return address of 1910 Dolphin Drive, Aptos, California 95003. Package No. 3 was mailed on September 8, 2016 and intercepted on September 12, 2016. When searched pursuant to a warrant, Package No. 3 was found to contain suspected marijuana having a total gross weight of approximately 1,019 grams.

The circumstances leading to those searches included the following facts. On August 26, 2016, Inspector Parham became aware of a suspect parcel, Package No. 1, which was addressed to Todd Roschelle. Inspector Parham testified that he had searched a law enforcement database called CLEAR (Consolidated Lead Evaluation and Reporting) and found that petitioner was associated with the Melwood Street mailing address on Package No. 1. The inspector explained that the database "works off phone records, credit reports, [and] utility bills."

As part of the investigation of Package No. 1, a deputy from the Solano County Sheriff's Office met Inspector Parham at the inspector's Richmond office at his request. The deputy deployed his canine, which was trained to detect and alert to the odor of narcotics. The deputy told Inspector Parham that the canine had "alerted to the scent of narcotics within the parcel."

On September 2, 2016, Inspector Parham obtained a warrant to search Package No. 1 from Federal Magistrate Kandis A. Westmore. The inspector's search warrant affidavit was partially based on the canine alert to the package. When the package was searched pursuant to the warrant, $5,000 was found inside.

After becoming aware of Package No. 2, Inspector Parham asked Inspector Paul Zavorski to "attempt to conduct a knock and talk" at the New Jersey mailing address. Inspector Zavorski and Agent Kevin Voit went there to deliver it.

Inspector Zavorski prepared "a memorandum of interview," which he gave to Inspector Parham, concerning Package No. 2. Inspector Zavorski reported to Inspector Parham that he had opened the parcel and had found doggie treats and approximately 907 grams of a leafy green substance, which he believed to be marijuana, inside. Inspector Zavorski emailed photographs of Package No. 2, including a photograph of package's interior, from his own email address. Inspector Parham was told by Inspector Zavorski that the photographs were accurate representations of the package. The photographs were admitted into evidence at the preliminary hearing.

Inspector Parham was able to retrieve and view a video taken at the Capitola Main Post Office on September 7, 2016, the date that Package No. 2 was mailed. The video showing a white male mailing a Priority Mail package from that post office branch on September 7, 2016 at approximately 11:53 a.m., but the inspector was unable to see the address on the package. Based on petitioner's California DMV ID photograph, Inspector Parham determined that the person seen in the video mailing the Priority Mail package was in fact petitioner.

Petitioner's DMV ID reflected an address of 176 Tiburon Court, Aptos, California 95003. That address was only slightly different than Package No. 2's return address (170 Tiburon Court). Inspector Parham testified that petitioner in the courtroom appeared to be the person in petitioner's California DMV ID photograph.

Inspector Parham asked Inspector Zavorski to attempt to contact Kyle Kondas at the mailing address of Package No. 3 (3 Hemlock Court, Trenton, New Jersey). Inspector Zavorski unsuccessfully attempted "a knock and talk" at that address. He personally went to the address and left a business card. When he received no call from

the addressee, he called a phone number associated with the address and left a voicemail message, which was not returned.

Package No. 3 was sent to Inspector Parham, and the inspector asked for the services of Officer Elmore and his canine. Officer Elmore was assigned to the San Francisco Police Department's narcotics division, and the officer worked with a canine trained as "a single-purpose narcotics detection dog" to detect the "odor of heroin, methamphetamine, methamphetamine-based narcotics, marijuana, and cocaine, both powder and base." His team had two certifications, one from the California Narcotics Canine Association and other from the California Peace Officer Standards and Training (POST).

Officer Elmore's dog was not trained to alert to money, and the dog did not alert when smelling food. The dog could differentiate between parcels merely containing dog food or treats and parcels containing both dog food and contraband. The officer had never encountered a situation where the dog failed to detect drugs that were there.

At Inspector Parham's request, Officer Elmore went to the postal headquarters in Richmond on September 20, 2016. The officer deployed his canine in the facility's parking lot, which was about half the size of a football field. The dog worked the area, and in less than two minutes, the dog focused on a box and exhibited a positive alert by assuming a posture in which he "lock[ed] up" and did not move. Inspector Parham, who accompanied Officer Elmore, observed the dog's behavior. Officer Elmore told Inspector Parham that the dog had alerted to the package.

Inspector Parham asked the Santa Cruz Narcotics Task Force to drive by 1910 Dolphin Drive, Aptos, the return address on Package No. 3. Sergeant Frank Gombos reported to him that the residence at that address appeared vacant. Inspector Parham was unable to obtain any video showing the person who had mailed Package No. 3.

On or about September 23, 2016, Inspector Parham applied for and obtained a warrant to search Package No. 3 from United States Magistrate Judge Ryu. Information regarding the certification of Officer Elmore's canine team was included in the search warrant affidavit.

During the search of Package No. 3 pursuant to warrant, Inspector Parham found "doggie-treat" bags (red "Pup-Peroni" bags), other dog treats in a cylindrical container, some dog toys, and a leafy green substance, which the inspector believed, based on his training and experience, was marijuana. The marijuana, which consisted of buds, was in vacuum-sealed packages and hidden inside two "doggie-treat" bags, which had resealable tops. According to the inspector, it was very common for marijuana sent through the mail to be vacuum sealed. On or about September 23, 2016, Inspector Parham took photographs of the packaging and contents of Package No. 3, and those photographs were admitted into evidence at the preliminary hearing.

Based on the photographs of Package No. 2 sent to him by Inspector Zavorski and the photographs of Package No. 3 that he had taken, Inspector Parham opined that the marijuana found in Package No. 2 and the marijuana found in Package No. 3 were similarly packaged. Inspector Parham observed that "both parcels concealed a leafy green substance in a red Pup-Peroni bag" and contained "cylindrical Snausage treats as well." The marijuana in each package consisted of buds and was vacuum sealed. Comparing the address labels on those two packages, Inspector Parham observed that the handwriting on the two parcels appeared similar and that neither parcel included the sender's name in the return address.

Inspector Parham had associated Package No. 3 with petitioner based on the similar packaging of Package Nos. 2 and 3, the similar handwriting on those packages, the return addresses on those packages, and the video evidence of petitioner mailing a Priority Mail package on September 7, 2016. Based on his training and experience, the

inspector explained that it was very common for narcotics traffickers to use previous or fictitious residences to send or receive narcotics or narcotics proceeds through the mail.

Lab tests confirmed that Package Nos. 2 and 3 contained narcotics. Petitioner's fingerprints were found on "the dog bags in both parcels."

Petitioner's motion to quash and traverse the warrant to search Package No. 3 and suppress evidence was also heard by the magistrate. In support of the motion, the defense called Inspector Parham and Steven Hollar.

Inspector Parham was asked about his affidavit in support of the warrant to search Package No. 1. In that affidavit, he had noted several "anomalies" of the package, specifically that (1) it was sent by Priority Mail, (2) the return address's zip code was different from the zip code of the place of mailing, and (3) the sender's name was not on the package. But the inspector recognized that thousands of Priority Mail packages were sent through the United States Postal Service (USPS) every day and that people did sometimes mail packages from zip codes other than those associated with their residences.

Inspector Parham acknowledged that he had used the CLEAR database and his research had disclosed that multiple people, including Phillip Hollar (who was born in 1978), were associated with the mailing address on Package No. 1. The inspector testified that the CLEAR database was updated by a "contracting company," but he did not know what type of "quality control" was done to ensure the accuracy of the information. He indicated that the affidavit in support of a warrant to search Package No. 1 listed Phillip Hollar and petitioner as persons of interest. When Package No. 1 was searched pursuant to the warrant, empty dog food bags, dog treats, and dog toys were found in addition to the $5,000 in cash.

Inspector Zavorski and Agent Voit went to the Talbot Way mailing address on Package No. 2 to talk with "the intended recipient." Inspector Zavorski's memorandum

indicated that the interview took place on September 9, 2016. Inspector Parham used that memorandum in drafting the search warrant affidavit for Package No. 3.

Inspector Parham testified that Ian Hollar appeared to be the "intended recipient" of Package No. 2, that no one by the name of Ian Hollar ever received the package, and that Steven Hollar was the person who answered the door and was interviewed. The inspector acknowledged that his search warrant affidavit stated that "Postal Inspector Zavorski obtained consent to search the drug parcel from the intended recipient." But Inspector Parham indicated that he had understood from Inspector Zavorski's memorandum that Inspector Zavorski had believed, based on the circumstances, that he was asking Ian Hollar for consent to open the package. When Inspector Zavoriski had asked for Ian Hollar at the door, Steven Hollar had nodded, acknowledged that he was expecting a package containing pet food and dog toys from California, said that he normally received such packages, and had attempted to accept the package. In Inspector Parham's view, even though Steven Hollar had not expressly identified himself as Ian Hollar, "Steven Hollar [had impliedly] acknowledged himself as Ian Hollar when . . . questioned by Inspector Zavorski." When opened, the package was found to contain marijuana in the dog food bags inside.

Inspector Parham stated that it was common for drug traffickers to use fictitious and partially fictitious names to avoid detection. Inspector Parham had not been able to locate or identify anyone with the name Ian Hollar in New Jersey who was associated with the mailing address on Package No. 2 or 3.

According to Inspector Zavorski's memorandum, Steven Hollar asked the officers to come inside his residence. Steven Hollar told them that the parcel was for his son, Phillip Hollar, and Steven Hollar disclosed that he typically called Phillip after a parcel arrived and Phillip would come pick it up. Steven Hollar had said that Phillip was a "contract electrician" and that Phillip tried to make money by selling marijuana when his

work was slow. Steven Hollar told Inspector Zavorski that he lived at that address with his wife and a son.

Inspector Parham testified that he had just spoken with Inspector Zavorski on the telephone the day before. During their conversation, Inspector Parham had learned from the other inspector that Steven Hollar had been sweating profusely and seemed very nervous during their interview.

Steven Hollar testified that he lived at 5221 Talbot Way, Hamilton, New Jersey on September 9, 2016. On that date, two men came to the door, identified themselves as postal inspectors, and asked him whether he was Ian Hollar. Steven Hollar claimed that he had said that he was not Ian Hollar and had identified himself as Steven Hollar. Steven Hollar indicated that when asked about the package's contents, he had explained that he had thought it contained dog treats and his son had told him that such a package was coming.

Steven Hollar acknowledged that he had invited the postal inspectors inside his apartment. The postal inspectors had told him that they suspected the substance was marijuana and that he was going to be arrested. Steven Hollar had told the postal inspectors that he had a son named Phillip, and they had asked whether he was dealing in marijuana. Steven had responded that Phillip was working but he was "just not making enough money."

Steven Hollar further testified that he had three sons, that Phillip was his middle son, and that none of his sons was named Ian. He said that he lived at the Talbot Way address with his wife and his youngest son. He acknowledged that he had told the postal inspectors that he "regularly receive[d] boxes of dog treats."

At the hearing, Steven Hollar disclosed that he usually received packages from California that were about the same size as Package No. 2, they usually had about $18 of postage, they were usually addressed to Ian Hollar, and he usually took delivery of them. He claimed that the postal inspectors had not asked for or received his permission to open

the package. When the package was opened, a green, leafy substance and dog treats were found inside. He said the package had been intended for his son Phillip.

In argument, defense counsel asserted that the evidence derived from searching Package No. 2 should be suppressed because the "intended recipient" had not consented to the search. She contended the court was required to strike "the offending portions of the [search warrant] affidavit," which then failed to establish probable cause to search Package No. 3. Defense counsel also asserted that there was no evidence that petitioner had touched Package No. 3, had any connection to its return address, or had mailed that package. She maintained that the evidence derived from searching Package No. 3 should be suppressed as well.

The prosecutor argued that the video showed petitioner mailing Package No. 2, his fingerprints were found on the dog bags in Package No. 3, and the contents of Package Nos. 2 and 3 were similar and included vacuum-sealed marijuana buds that were placed inside a bag of dog treats or dog food. Defense counsel pointed out that Inspector Parham's affidavit had omitted the name of the addressee on Package No. 2.

Regarding Inspector Parham's statement in his search warrant affidavit that Inspector Zavorski had obtained consent to search Package No. 2 "from the intended recipient," the magistrate was convinced that Inspector Parham "honestly and in good faith believed that the package [had been] opened with the consent of the intended recipient." The magistrate further found that the statement was not false or misleading and that Inspector Parham had not made a false or misleading statement, either intentionally or with reckless disregard for the truth. The magistrate also determined that petitioner had no standing to object to the search of a package once he had mailed it.[4]

[4] "Letters and other sealed packages are in the general class of effects in which the public at large has a legitimate expectation of privacy; warrantless searches of such effects are presumptively unreasonable. Even when government agents may lawfully seize such a package to prevent loss or destruction of suspected contraband, the Fourth Amendment requires that they obtain a warrant before examining the contents of such a

The magistrate denied the motion to quash and traverse the warrant and to suppress evidence. Petitioner was held to answer.

By information filed on October 6, 2017, petitioner was charged with two felonies of unlawfully transporting marijuana in violation of Health and Safety Code section 11360, subdivision (a) (counts 1 and 2).

On November 2, 2017, petitioner filed a motion to set aside the information pursuant to section 995. The motion asserted that (1) over defense objection, the magistrate had erroneously admitted hearsay (see § 872), and the remaining nonhearsay evidence was insufficient to support the order holding him to answer (see § 995, subd. (a)(2)(B)), (2) the evidence was insufficient in any case because there was no evidence that petitioner knew that the two packages contained marijuana, and (3) the magistrate had erroneously denied his motion to quash and traverse the search warrant and suppress evidence.

The prosecution and the defense filed additional memoranda concerning the section 995 motion.

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package." (*United States v. Jacobsen* (1984) 466 U.S. 109, 114, fns. omitted.) "Both senders and addressees of packages or other closed containers can reasonably expect that the government will not open them. [Citations.]" (*United States v. Villarreal* (5th Cir. 1992) 963 F.2d 770, 774 (*Villarreal*).) But any expectation of privacy that a sender has in a letter or package that is sent through the mail "ordinarily terminates upon delivery. [Citations.]" (*United States v. King* (6th Cir. 1995) 55 F.3d 1193, 1196.) Intended recipients "may assert a reasonable expectation of privacy in packages addressed to them under fictitious names. [Citations.]" (*Villarreal*, *supra*, at p. 774.) The "capacity to claim the protection of the Fourth Amendment depends . . . upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place." (*Rakas v. Illinois* (1978) 439 U.S. 128, 143.) The United States Supreme Court has concluded that "the better analysis" "focuses on the extent of a particular defendant's [substantive] rights under the Fourth Amendment, rather than on any theoretically separate, but invariably intertwined concept of standing." (*Id*. at p. 139.) "The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure. [Citations.]" (*Id*. at p. 131, fn. 1; see *id*. at pp. 133-134 [" 'Fourth Amendment rights are personal rights which . . . may not be vicariously asserted' "].)

On December 14, 2017, the trial court denied petitioner's motion pursuant to section 995. No explanation of the ruling was given on the record.

II

Discussion

A. *Review of Denial of Section 995 Motion*

1. *Standard of Review*

"The purpose of the preliminary hearing is to determine whether there is probable cause to conclude that the defendant has committed the offense charged. (*People v. Wallace* (2004) 33 Cal.4th 738, 749; Pen. Code, § 872.) Probable cause exists if a person ' " ' "of ordinary caution or prudence would be led to believe and conscientiously entertain a strong suspicion" ' " ' that the defendant committed the crime. [Citations.]" (*Galindo v. Superior Court* (2010) 50 Cal.4th 1, 8.)

Section 995, subdivision (a), provides in pertinent part that the "information shall be set aside by the court in which the defendant is arraigned, upon his or her motion" where "before the filing [of the information] the defendant had not been legally committed by a magistrate" (§ 995, subd. (a)(2)(A) or "the defendant had been committed without reasonable or probable cause."[5] (§ 995, subd. (a)(2)(B).)

"[I]n proceedings under section 995 it is the magistrate who is the finder of fact; the superior court has none of the foregoing powers, and sits merely as a reviewing court; it must draw every legitimate inference in favor of the information, and cannot substitute its judgment as to the credibility or weight of the evidence for that of the magistrate.

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[5] Under section 872, subdivision (a), a magistrate holds a defendant to answer where "it appears from the [preliminary] examination that a public offense has been committed, and there is sufficient cause to believe that the defendant is guilty." " 'The term "sufficient cause" [in section 872, subdivision (a)] is generally equivalent to [the phrase] "reasonable and probable cause" [in section 995, subdivision (a)(2)(B)] that is, such a state of facts as would lead a [person] of ordinary caution or prudence to believe and conscientiously entertain a strong suspicion of the guilt of the accused.' [Citation.]" (*People v. Williams* (1988) 44 Cal.3d 883, 924.)

[Citation.] On review by appeal or writ, moreover, the appellate court in effect disregards the ruling of the superior court and directly reviews the determination of the magistrate holding the defendant to answer. [Citations.]" (*People v. Laiwa* (1983) 34 Cal.3d 711, 718.)

"Insofar as the . . . section 995 motion rests on issues of statutory interpretation, our review is de novo. [Citation.] Insofar as it rests on consideration of the evidence adduced, we must draw all reasonable inferences in favor of the information [citations] and decide whether there is probable cause to hold the defendants to answer, i.e., whether the evidence is such that 'a reasonable person could harbor a strong suspicion of the defendant's guilt' [citations]." (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1072 (*Lexin*).)

B. *Admission of Hearsay Over Objection at Preliminary Hearing*

When Inspector Parham was asked to relate hearsay statements made by another law enforcement officer during the preliminary hearing, defense counsel objected on hearsay grounds. The prosecutor asserted that the inspector was qualified to testify to hearsay under section 872, subdivision (b). Defense counsel asserted that the inspector did not meet the requirements of section 872, subdivision (b), because he did not have the requisite number of years of law enforcement experience and he was not "POST certified." The prosecutor argued that the 12-week basic inspector training program qualified the inspector to give hearsay testimony.

The magistrate agreed that Inspector Parham did not have five years of law enforcement experience and that there was no evidence that the inspector had completed a training certified by POST. Nevertheless, the magistrate initially indicated that he was satisfied that the inspector had "sufficient qualifications, being a federal agent, to permit him to testify" "[u]nder the spirit of [section 872]."

After further argument, Inspector Parham testified that his core training covered investigating crimes, interviewing witnesses and suspects, and testifying in front of grand

juries, and that he had a follow-up training or trainings, which addressed hearsay testimony. In argument, the prosecutor indicated that the FLETC partnered with the federal Postal Inspection Service and that the basic inspector training for postal inspectors had accreditation from FLETA (Federal Law Enforcement Training Accreditation).

The magistrate concluded that Inspector Parham's qualifications did not fit "the letter of the law," but he believed that the inspector was "in substantial compliance" with section 872. The magistrate overruled the objection, stating that the inspector was permitted "to testify to hearsay as if he were certified by the Peace Officer Standards and Training in that area."

When Inspector Parham was subsequently asked to relate hearsay statements of another postal inspector, Inspector Paul Zavorski, the defense objected on section 872 grounds. The magistrate made clear that the defense objection under section 872 would be regarded as continuing and that defense counsel was not required to repeatedly object.

C. *Magistrate Erred in Admitting Hearsay Testimony Over Objection*

1. *Governing Law*

At the time of the preliminary examination, section 872, subdivision (b), provided and still does provide: "Notwithstanding Section 1200 of the Evidence Code, the finding of probable cause may be based in whole or in part upon the sworn testimony of a law enforcement officer or honorably retired law enforcement officer relating the statements of declarants made out of court offered for the truth of the matter asserted. An honorably retired law enforcement officer may only relate statements of declarants made out of court and offered for the truth of the matter asserted that were made when the honorably retired officer was an active law enforcement officer. Any law enforcement officer or honorably retired law enforcement officer testifying as to hearsay statements *shall either have five years of law enforcement experience or have completed a training course certified by the Commission on Peace Officer Standards and Training that includes*

training in the investigation and reporting of cases and testifying at preliminary hearings."[6] (Italics added.)

Subdivision (c) of section 872 was added by statute in 2013 (Stats. 2013, ch. 125, § 1, p. 1994). It defines a law enforcement officer for purposes of subdivision (b) as "any officer or agent employed by a federal, state, or local government agency to whom all of the following apply: [¶] (1) Has either five years of law enforcement experience or who has completed a training course certified by the Commission on Peace Officer Standards and Training that includes training in the investigation and reporting of cases and testifying at preliminary hearings. [¶] (2) Whose primary responsibility is the enforcement of any law, the detection and apprehension of persons who have violated any law, or the investigation and preparation for prosecution of cases involving violation of laws."

A POST-certified course is a course that the Commission on Peace Officer Standards and Training has approved pursuant to California Code of Regulations, title 11, sections 1052-1056. (Cal. Code Regs., tit. 11, § 1051; see §§ 13503, subd. (e), 13505.) "POST certification [e]nsures, among other things, that the course is taught by qualified instructors and meets certain curriculum requirements. (Cal. Code Regs., tit. 11, § 1052)." (*Hollowell v. Superior Court* (1992) 3 Cal.App.4th 391, 395 (*Hollowell*) [the district attorney failed to establish that a police officer with two years of experience had completed a POST-certified training course].)

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[6] Legislation in 2005 added section 872's language concerning honorably retired law enforcement officers. (Stats. 2005, ch. 18, § 1, p. 81.) " 'Hearsay evidence' is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated." (Evid. Code, § 1200, subd. (a).) " 'Statement' means (a) oral or written verbal expression or (b) nonverbal conduct of a person intended by him as a substitute for oral or written verbal expression." (Evid. Code, § 225; see Evid. Code, § 175 [definition of "person"].) "For purposes of the hearsay rule, conduct is assertive if the actor at the time intended the conduct to convey a particular meaning to another person. [Citation.]" (*People v. Jurado* (2006) 38 Cal.4th 72, 129.)

2. *Section 872, Subdivision* (b), *Construed and Upheld*

"Special rules apply to the admission of hearsay evidence at a preliminary hearing in a criminal case. In June 1990, an initiative measure designated as Proposition 115 was adopted by the voters. Along with other provisions not relevant here, the measure added the following language to the state Constitution: 'In order to protect victims and witnesses in criminal cases, hearsay evidence shall be admissible at preliminary hearings, as prescribed by the Legislature or by the people through the initiative process.' (Cal. Const., art. I, § 30, subd. (b).)" (*Correa v. Superior Court* (2002) 27 Cal.4th 444, 451 (*Correa*.) "In addition, the measure amended . . . section 872, subdivision (b), to provide that a probable cause determination at a preliminary examination may be based on out-of-court declarants' hearsay statements related by a police officer with certain qualifications and experience. [Citation.] Additionally, the measure added Evidence Code section 1203.1 to provide a preliminary examination exception to the general requirement that all hearsay declarants be made available for cross-examination. [Citation.]" (*People v. Miranda* (2000) 23 Cal.4th 340, 348 (*Miranda*).)

"[A]fter the passage of Proposition 115, the preliminary hearing now serves a limited function. No longer to be used by defendants for discovery purposes and trial preparation, it serves merely to determine whether probable cause exists to believe that the defendant has committed a felony and should be held for trial. [Citation.]" (*Correa*, *supra*, 27 Cal.4th at p. 452.)

In *Whitman v. Superior Court* (1991) 54 Cal.3d 1063 (*Whitman*), the petitioner raised "various challenges under the federal and state Constitutions to the provisions of [Proposition 115] that authorize the admission of hearsay evidence at preliminary hearings in criminal cases. [Citations.]" (*Id*. at p. 1068.) The California Supreme Court held that "properly construed and applied, the hearsay provisions of Proposition 115 are constitutionally valid." (*Ibid*.)

In *Whitman*, "the evidence admitted at [the] petitioner's preliminary hearing, consisting entirely of hearsay testimony by a noninvestigating officer lacking any personal knowledge of the case." (*Whitman, supra,* 54 Cal.3d at p. 1068.) The Supreme Court came to the conclusion that evidence was "insufficient and incompetent to constitute probable cause to bind [the] petitioner over for trial" (*ibid*.) and that the petitioner's "motion to dismiss the charges should have been granted." (*Ibid*.)

The Supreme Court believed that "the probable intent of the framers of the measure was to allow a *properly qualified* investigating officer to relate out-of-court statements by crime victims or witnesses, including other law enforcement personnel, without requiring the victims' or witnesses' presence in court." (*Whitman, supra,* 54 Cal.3d at p. 1072, italics added.) It stated that "in permitting only officers with lengthy experience or special training to testify regarding out-of-court statements, . . . section 872, subdivision (b), plainly contemplates that the testifying officer will be capable of using his or her experience and expertise to assess the circumstances under which the statement is made and to accurately describe those circumstances to the magistrate so as to increase the reliability of the underlying evidence." (*Id*. at p. 1074.)

But the Supreme Court also determined that the "requirement of training in 'investigating and reporting' crimes strongly supports petitioner's position that Proposition 115's hearsay provisions were intended to foreclose the testimony of a noninvestigating officer lacking personal knowledge of either the crime or the circumstances under which the out-of-court statements were made. [Citation.]" (*Whitman, supra,* 54 Cal.3d at p. 1073.) The court observed that "an interpretation of Proposition 115 that would allow 'reader' or multiple hearsay testimony would raise constitutional questions that we can and should avoid by limiting admissible hearsay testimony to testimony by *qualified* investigative officers. [Citations.]" (*Id*. at p. 1074, italics added.) The court reasoned that "to allow testimony by noninvestigating officers or readers would seemingly sanction a form of double or multiple hearsay beyond the

contemplation of the framers of, and voters for, Proposition 115. (See Evid. Code, § 1201 [multiple hearsay admissible only if each hearsay statement admissible under hearsay rule exception].)" (*Ibid*.) It found it "noteworthy that although Proposition 115 created an exception to the basic hearsay rule contained in Evidence Code section 1200 . . . , the measure did not purport to create a similar exception for the multiple hearsay rule of Evidence Code section 1201." (*Ibid*.)

The Supreme Court in *Whitman* stated that the "testifying officer . . . must not be a mere reader but must have sufficient knowledge of the crime or the circumstances under which the out-of-court statement was made so as to meaningfully assist the magistrate in assessing the reliability of the statement." (*Whitman, supra*, 54 Cal.3d at pp. 1072-1073.) It emphasized that "the experience and training requirements of the section help assure that the hearsay testimony of the investigating officer will indeed be as reliable as appropriate in light of the limited purpose of the preliminary hearing . . . (See *Manson v. Brathwaite* (1977) 432 U.S. 98, 115 [reliability of trained, experienced police officers].)" (*Id*. at p. 1078.) In rejecting federal due process concerns, the Supreme Court in *Whitman* stated that section 872 provided only a "limited exception to the general hearsay exclusionary rule of Evidence Code section 1200, by allowing a probable cause finding to be based on certain hearsay testimony by law enforcement officers having *specified experience or training*." (*Whitman*, *supra*, at p. 1082, italics added.) It concluded that section 872 "does not permit hearsay testimony by a noninvestigating officer lacking any personal knowledge of the circumstances under which the out-of-court statement, declaration or report was made" (*Whitman*, *supra*, at p. 1078) and that "the evaluation and cross-examination of the testimony of the *qualified* investigating officer provides sufficient basis for a pretrial probable cause determination." (*Ibid*., italics added.)

The Supreme Court subsequently held in another case that "neither the state hearsay rule nor applicable federal confrontation or due process principles render inadmissible a *qualified* law enforcement officer's preliminary examination testimony

relating a nontestifying codefendant's extrajudicial confession incriminating the defendant." (*Miranda*, *supra*, 23 Cal.4th at p. 343, italics added.) The court stated that in *Whitman* it had construed Proposition 115 "to allow a *qualified* law enforcement officer to relate single-level hearsay . . . if the officer had sufficient knowledge of the crime or the circumstances under which the out-of-court statement was made so as to provide meaningful assistance to the magistrate in assessing the *reliability* of the statement." (*Miranda*, *supra*, at p. 348, first italics added.) It found "no basis in the language of Proposition 115 as construed by *Whitman*, or in the federal decisions applying confrontation clause principles, for creating an 'accomplice confession' exception to the general rule permitting admission of hearsay evidence at preliminary examinations." (*Miranda*, *supra*, at p. 352.)

3. *Proper Construction of Section 872's Experience and Training Requirements*

a. Statutory Construction

We now consider whether the magistrate properly construed section 872's hearsay exception. As indicated, our review of an issue of statutory construction is de novo. (*Lexin*, *supra*, 47 Cal.4th at p. 1072.)

"Our fundamental task in construing a statute is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. [Citation.]" (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272 (*Day*).) "In interpreting a voter initiative, we apply the same principles that govern our construction of a statute. [Citation.] We turn first to the statutory language, giving the words their ordinary meaning. [Citation.] If the statutory language is not ambiguous, then the plain meaning of the language governs. [Citation.] If, however, the statutory language lacks clarity, we may resort to extrinsic sources, including the analyses and arguments contained in the official ballot pamphlet, and the ostensible objects to be achieved. [Citations.]" (*People v. Lopez* (2005) 34 Cal.4th 1002, 1006.) "In such circumstances, we ' "select the construction that comports most closely with the apparent [legislative] intent . . . , with a view to promoting rather

than defeating the general purpose of the statute, and [we] avoid an interpretation that would lead to absurd consequences." [Citation.]' [Citations.]" (*Day, supra,* at p. 272.)

We are cognizant, however, that we do not write on an entirely clean slate. The California Supreme Court has carefully construed section 872, subdivision (b), as amended by Proposition 115, to avoid constitutional infirmity and uphold it against constitutional challenge. As construed, section 872 sets the minimum qualifications for law enforcement officers who relate hearsay at preliminary hearings, and those requirements are considered the bulwark against the admission of unreliable hearsay evidence. Consequently, in construing the section's hearsay exception, we keep in mind that "[w]hen a question of statutory interpretation implicates constitutional issues, we are guided by the precept that ' "[i]f a statute is susceptible of two constructions, one of which will render it constitutional and the other unconstitutional in whole or in part, or raise serious and doubtful constitutional questions, the court will adopt the construction which, without doing violence to the reasonable meaning of the language used, will render it valid in its entirety, or free from doubt as to its constitutionality, even though the other construction is equally reasonable." ' [Citations.]" (*People v. Gutierrez* (2014) 58 Cal.4th 1354, 1373 (*Gutierrez*).)

b. No Showing that Parham had Five Years of Law Enforcement Experience

Here, Inspector Parham testified at the preliminary hearing that he reported to duty as a postal inspector on October 4, 2012, which meant that he was still a little over a week short of five years of experience as a postal inspector when he began testifying on September 26, 2017. That was the evidence before the magistrate when it ruled on the defense objection under section 872. There was no dispute at the preliminary hearing that the inspector did not have the requisite five years of law enforcement experience as a postal inspector. (§ 872, subds. (b), (c).)

The Attorney General now asserts that Inspector Parham actually had more than five years of law enforcement experience when he testified at the preliminary hearing

because he had been "employed for that amount of time in a law enforcement capacity," "irrespective of whether he had five years of experience after he had reported for duty as a Postal Inspector who had graduated the academy." The Attorney General argues that any issue concerning the adequacy of the inspector's experience was "cured" by his declaration that accompanied the return.

To arrive at a total of more than five years, the Attorney General counts Inspector Parham's experience as an investigative specialist for the Federal Bureau of Investigation (FBI) or his training before he became a postal inspector or both. The Attorney General argues that section 872 does not connect the phrases "law enforcement officer" and "law enforcement experience" and that the section defines only the former and not the latter.

Inspector Parham's declaration states that prior to working for "the USPS," he worked as an FBI investigative specialist for four years and that his duties included surveillance of suspects, gathering of intelligence, and testifying if necessary. Parham also reports in his declaration that he "received twelve weeks of Basic Inspector Training in investigative techniques . . . and [o]ne week of Prohibited Mailing Narcotics Training." He states that the 12-week course included interviewing witnesses and writing reports and that he also completed a course in hearsay *or* preliminary hearings. (Italics added.) According to Parham's declaration those courses were "approved by the Federal Law Enforcement Training Association [*sic*]," and the training took place before he became a postal inspector.

We are not convinced that the phrase "law enforcement experience" has some undefined, open-ended meaning. That view would inject uncertainty into section 872's hearsay exception and require its scope to be fleshed out case by case. Given the section's definition of "law enforcement officer," the most reasonable and straightforward reading of section 872 and the phrase "law enforcement experience" is that a law enforcement officer, or an honorably retired law enforcement officer, must have five years of actual experience *as a law enforcement officer* or have completed a

POST-certified training course that "includes training in the investigation and reporting of cases *and* testifying at preliminary hearings" (§ 872, subd. (b), italics added) before the hearsay exception applies to the officer's testimony. Investigative experience in other than the capacity of a law enforcement officer does not count toward the five years. Our construction is also consistent with the canon of statutory construction that requires a statute to be construed in a manner that avoids constitutional doubts or questions if possible. (See *People v. Gutierrez*, *supra*, 58 Cal.4th at pp. 1373-1374.) As already indicated, the witness qualifications imposed by the statute were key to upholding section 872's hearsay exception against constitutional challenge.

The twin requirements of section 872 mean that a witness has both (1) the status of being a law enforcement officer, either currently serving or honorably retired, as defined and (2) the requisite experience or training that helps ensure that the hearsay to which the officer testifies is reliable. Thus, it is not enough to simply be such an officer. The separate requirement of five years of experience in the absence of the requisite training must be reasonably interpreted to exclude the periods of time during which an officer was not garnering experience. Such omitted periods may include, for example, the period after a law enforcement officer was sworn but not yet on active duty (as perhaps in this case) or the period during which such an officer was on a formal leave of absence. The experience qualification permits a testifying law enforcement officer to aggregate his or her qualifying experience working for different federal, state, or local government agencies.

We reject the argument that we can add four years to Inspector Parham's almost five years of experience as a postal inspector based on his earlier employment as an FBI investigative specialist. Evidence of that job and the duties it entailed was not presented at the preliminary hearing. "[S]ection 995 allows a defendant to challenge an information based on the sufficiency of the *record made before the magistrate* at the preliminary hearing. [Citation.]" (*Lexin*, *supra*, 47 Cal.4th at pp. 1071-1072, italics

added; see *People v. Jacinto* (2010) 49 Cal.4th 263, 272, fn. 5.) In any case, although Inspector Parham indicated that his duties as an FBI investigative specialist included surveillance of suspects, gathering of intelligence, and testifying if needed, his declaration does not explicitly state that his "primary responsibility" in that position was "the enforcement of any law, the detection and apprehension of persons who have violated any law, or the investigation *and preparation for prosecution* of cases involving violation of laws." (§ 872, subd. (c)(2), italics added.)

Further, Inspector Parham's statement in his declaration that he has been a postal inspector with the USPS *since* September 2012 does not alter our conclusion. The word "since" may mean "[i]n the intervening period between (the time mentioned) and the time under consideration" (Oxford English Dict. <https://en.oxforddictionaries.com/definition/since> [as of Jan. 25, 2019], archived at: <https://perma.cc/9GU4-DFW9>) or "continuously from a time in the past until the present" (Merriam-Webster Unabridged Dict. <http://unabridged.merriam-webster.com/unabridged/since> [as of Jan. 25, 201, archived at: <https://perma.cc/TSB9-6E2K>]). Thus, his use of the word "since" creates some ambiguity as to when his law enforcement experience as a postal inspector actually began. His statement does not necessarily establish that he had five years of *experience* as a postal inspector when he was testifying at the preliminary hearing.

Accordingly, even if this court is entitled to consider "all relevant evidence, including facts not existing until after the petition for writ of mandate was filed" (*Bruce v. Gregory* (1967) 65 Cal.2d 666, 670-671) in deciding whether to issue a peremptory writ, Inspector Parham's declaration is insufficient to show that he had satisfied the five-year experience requirement for testifying to hearsay at the time of the preliminary hearing. (See§ 872, subds. (b), (c).)

c. No Showing that Parham had Completed the Requisite Training

It is not disputed that Inspector Parham had not "completed a training course certified by the Commission on Peace Officer Standards and Training that includes training in the investigation and reporting of cases and testifying at preliminary hearings." (§ 872, subd. (b).) The Attorney General asserts, however, that the courses completed by Parham were approved by "the Federal Law Enforcement Training Association [*sic*]," that the postal inspector academy was "part of" the FLETC, and that the federal government had "an interest in adequately training its law enforcement officers [to] assess the reliability of what [is] told to them." On this basis, the Attorney General argues that Parham's training was "substantially equivalent to POST-certified training" and that therefore there was "substantial compliance" with section 872. The Attorney General contends that there is "no reason to conclude that an officer who had completed POST training or who had one more week of law enforcement experience [as a postal inspector] than [did] Parham . . . would have been in a better position to assess the reliability of the [hearsay] statements" to which he testified.

"Substantial compliance means ' ["]*actual* compliance in respect to the substance essential to every reasonable objective of the statute," as distinguished from "mere technical imperfections of form." ' [Citation.]" (*People v. Jacobs* (1987) 43 Cal.3d 472, 483.) Even assuming arguendo that FLETA accreditation might suffice as a substitute for POST-certification *if* they were functionally equivalent, no evidentiary showing of such equivalence was made at the preliminary hearing or in Inspector Parham's declaration. In addition, the inspector's declaration does not show that the courses he had taken covered "the investigation and reporting of cases and testifying at [California] preliminary hearings" (§ 872, subd. (b)), at which magistrates depend on qualified law enforcement officers "to provide meaningful assistance . . . in assessing the *reliability* of [a hearsay] statement." (*Miranda, supra,* 23 Cal.4th at p. 348; see *Whitman, supra*, 54 Cal.3d at p. 1074.) The inspector's declaration merely says, "The courses I took were

approved by the Federal Law Enforcement Training Association [*sic*]." Consequently, we are compelled to conclude that there was no mere technical imperfection of form; there was simply noncompliance with section 872's experience and training requirements.

Since the reliability of hearsay testimony at preliminary hearings implicates constitutional questions of reliability and fundamental fairness in ascertaining probable cause to hold a defendant to answer, we adhere to the explicit qualification standards established by section 872, as construed by the Supreme Court. Literal compliance with section 872, subdivisions (b) and (c), as construed, avoids constitutional doubts and is "simple to prove while resolution of recurring issues of substantial compliance would cast a significant burden on the judicial system." (*People v. Jenkins* (1983) 146 Cal.App.3d 22, 25, fn. 3.)

In this case, the magistrate erred in admitting hearsay testimony from Inspector Parham over objection. Since federal law enforcement officers may receive FLETA-accredited training rather POST-certified training, we urge the California Legislature to review FLETA accreditation and to amend section 872 if warranted.

4. *Commitment Without Reasonable or Probable Cause*

The Attorney General does not argue that without the erroneously admitted hearsay, the evidence presented at the preliminary hearing was sufficient to establish reasonable or probable cause (see § 995, subd. (a)(2)(B)).[7] The Supreme Court has held

[7] Petitioner's section 995 motion did not challenge his commitment under section 995, subdivision (a)(2)(A). Under that provision, an information must ordinarily be set aside upon a defendant's motion if "before the filing [of the information] the defendant had not been legally committed by a magistrate." (§ 995, subd. (a)(2)(A); see 995a, subd. (b).) In *People v. Pompa-Ortiz* (1980) 27 Cal.3d 519 (*Pompa-Ortiz*), the California Supreme Court stated that "[i]t is settled that denial of a *substantial right* at the preliminary examination renders the ensuing commitment illegal and entitles a defendant to dismissal of the information on timely motion. [Citations.]" (*Id*. at p. 523, italics added.) *Pompa-Ortiz* held: "Henceforth irregularities in the preliminary examination procedures which are not jurisdictional in the fundamental sense shall be reviewed

that a finding of probable cause cannot be entirely based upon testimony that fails to meet the requirements of section 872 as construed. (See *Whitman*, *supra*, 54 Cal.3d at p. 1068 [section 995 motion should have been granted where evidence admitted at preliminary hearing was "insufficient and incompetent to constitute probable cause to bind petitioner over for trial" because it consisted entirely of hearsay testimony given by a non-investigating officer who lacked any personal knowledge of the case].) In this case, some nonhearsay evidence was presented at the preliminary hearing, but it was not alone sufficient to establish reasonable or probable cause.

Inspector Parham's testimony that he had seen petitioner mailing a Priority Mail package in a video recorded at the Capitola main post office on September 7, 2016 was not enough by itself to establish probable cause to believe that petitioner had violated Health and Safety Code section 11360, subdivision (a) (unlawful transportation for sale of marijuana). The nonhearsay evidence of an alert to Package No. 3 by a trained narcotics-detection canine and Inspector Parham's knowledge of the packaging and contents of Package No. 3 were not enough to link petitioner to its mailing.

Even though photographs are not hearsay (*People v. Edwards* (2013) 57 Cal.4th 658, 773), Inspector Zavorski's hearsay statements concerning Package No. 2 and the

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[on appeal] under the appropriate standard of prejudicial error and shall require reversal only if defendant can show that he was deprived of a fair trial or otherwise suffered prejudice as a result of the error at the preliminary examination. The right to relief without any showing of prejudice will be limited to pretrial challenges of irregularities." (*Id*. at p. 529; see *People v. Standish* (2006) 38 Cal.4th 858, 885 (*Standish*) ["unlike the situation of pretrial review pursuant to section 995, posttrial review of error occurring at the preliminary examination requires a showing of prejudice"].) "[G]enerally a denial of substantial rights occurs only if the error '*reasonably might have affected the outcome*.' [Citations.] By this language, [the Supreme Court does] not mean that the defendant must demonstrate that it is reasonably *probable* he or she would not have been held to answer in the absence of the error. Rather, the defendant's substantial rights are violated when the error is not minor but 'reasonably *might* have affected the outcome' in the particular case. (*People v. Konow* [(2004)] 32 Cal.4th [995,] 1024, italics added.)" (*Standish*, *supra*, at pp. 882-883, first italics added.)

subject and accuracy of the photographs that he emailed to Inspector Parham were foundational to Inspector Parham's comparison of Package Nos. 2 and 3 and, in turn, to his opinion that petitioner had mailed both packages. While an expert may rely on hearsay in forming an opinion (see *People v. Sanchez* (2016) 63 Cal.4th 665, 685), the facts underlying his opinion were not independently proven by competent evidence. Under that circumstance, his opinion carried little or no weight. Further, the hearsay contained in the laboratory reports that confirmed the nature of the substances found in Package Nos. 2 and 3 and reported that fingerprints found on bags in those packages belonged to petitioner was essential to establishing probable cause.

Since Inspector Parham's hearsay testimony was vital to establishing probable cause to hold petitioner to answer, the trial court erred in denying petitioner's section 995 motion. (See *Hollowell, supra,* 3 Cal.App.4th at pp. 395-396.)

DISPOSITION

Let a peremptory writ of mandate issue compelling the superior court to vacate its order denying petitioner's section 995 motion to set aside the information and to enter a new order granting the motion. This opinion is made final as to this court seven days after the date of filing. (Cal. Rules of Court, rule 8.490(b)(2)(A).) This court's stay order shall remain in effect until this decision is final.

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ELIA, J.

WE CONCUR:

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GREENWOOD, P. J.

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MIHARA, J.

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